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CURRENT TOPICS

Criminal Appeal: New Trials

IT is a strange world in which nearly everyone agrees that something must be done but there is no time in which to do it. That, substantially, is the unsatisfactory position in which we are left after the debate in the House of Lords on 8th May on the proposal by the LORD CHIEF JUSTICE that the Court of Criminal Appeal should have power to order a new trial. The Lord Chief Justice in 1909, Lord Goddard said, had expressed the view that the court should have this power, and every Lord Chief Justice since then, he believed, had expressed the same opinion. His lordship referred to the recent murder case of *R.* v. *Devlin and Burns*, and said that he did not utter a word of criticism of the action of the Home Secretary, who had to make inquiries, and had no other course open to him but to appoint eminent counsel to hold an inquiry, there being no power in the Court of Criminal Appeal to order a new trial. In reply the LORD CHANCELLOR begged Lord Goddard "to go on ploughing the wilderness." There was not such a weight of opinion behind Lord Goddard's view, he said, as would justify the Government in now introducing legislation, even if there was room in their crowded legislative programme for the introduction of a measure which was certainly controversial. How "controversial" it is may be judged from another part of the Lord Chancellor's speech, where he said: "Although, if this became a matter of immediate legislation, I should certainly cause further inquiries to be made, I believe that those fellow members of our Commonwealth . . . introducing this system of giving to the court the power to order a new trial have found that this power has not militated in the least against the due administration of justice . . . I believe that there is much force in the argument that almost without exception, but not quite, our own judges entrusted with the administration of the criminal law . . . demand that, in the interests of justice, this power should be given to the Court of Criminal Appeal." A fuller account of the debate appears on p. 315, *post*.

A Wife's Security in the Matrimonial Home

WITHIN recent years the climate of judicial opinion has shown a distinct tendency to develop the law in favour of conferring upon wives rights of property which have so far been denied to them by the Legislature. On 25th April Dr. EDITH SUMMERSKILL'S Women's Disabilities Bill failed to receive a second reading, but on 5th May the Court of Appeal took another step in the protection of a deserted wife's security in the matrimonial home in the case of *Bendall* v. *McWhirter*. Mrs. McWhirter appealed against a possession order given to the trustee in bankruptcy of her husband's property ejecting her from the matrimonial home. In April, 1950, he had deserted her, saying: "You can have

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the house and furniture." On 19th January, 1951, the husband and wife, who were partners, had both been adjudicated bankrupt and Mr. Bendall was trustee of both their properties. He claimed that she was a trespasser in the property, which had now vested in him; she said he had no greater right to the property than had her husband, and that the latter could not have got a possession order against her. It was argued on her behalf that the trustee, being an officer of the court, must act in accordance with the highest standards, i.e., he could not do anything which neither the creditors nor the husband could do. For the trustee it was argued that though the wife had certain rights incidental to her matrimonial status, those rights were against the husband and did not attach to the land and hence did not affect the trustee when the land passed to him. DENNING, L.J., said: "A wife is no longer her husband's chattel and she is beginning to be regarded by the law as a partner in all affairs which are their common concern . . . The position of the wife in the matrimonial home was that of a licensee with a special right under which her husband could not turn her out except by order of the court. Was this right binding on the trustee in bankruptcy? My conclusion is that a contractual licensee who is in actual occupation of land by virtue of the licensee has an interest which is valid, if not in law at any rate in equity, against the successors in title of the licensor, including his trustee in bankruptcy. A wife's right to stay in the home thus does not end automatically on her husband's bankruptcy. She has an equitable right to stay, which is binding on the trustee." ROMER and SOMERVELL, L.JJ., concurred.

Rent Control

ONE of the many reforms of the law for which there never seems to be any legislative time is the amendment and consolidation of the Rent Restrictions Acts. The Chartered Auctioneers' and Estate Agents' Institute, who have done valiant work on this subject in the past, have just published a memorandum of their proposals for amendment of the law, which they recently submitted to the Minister of Housing and Local Government. It commences with the telling point that it is now seven years since the presentation to Parliament of the Report of the second Ridley Committee on Rent Control. Since then the piecemeal legislation in 1946 and 1949 has necessitated a fresh study of the whole question. Immediate action, they say, is necessary to prevent a large number of dwelling-houses from falling into a serious condition of disrepair owing to controlled rents being insufficient to enable owners to maintain them properly. They support the recent proposal by the Royal Institution of Chartered Surveyors that controlled rents should be increased by an amount equal to such percentage of the statutable deductions for rating as represents the increase in repair costs since 1939, subject to a modification to secure that increases of rent will not fall below a reasonable minimum. As a long-term proposal it is suggested that the controlled rent should be based on the gross value for rating purposes, the assessment of which should not be based on Pt. IV of the Local Government Act, 1948, but according to s. 68 of the Rating and Valuation Act, 1925, and s. 4 of the Valuation (Metropolis) Act, 1869, subject to the substitution of 1938 rental values for current rental values. Various permitted increases are suggested, including an amount to cover the increase in the cost of repairs since 1939. These proposals, apart from the practical difficulties of altering rents, seem the embodiment of common sense.

Further Proposals

FURTHER proposals of the Chartered Auctioneers' and Estate Agents' Institute for the amendment of the law with regard to rent control raise somewhat more difficult questions, on which diverse opinions are held, but they show a boldness and decisiveness which are very refreshing after years of indecision. These proposals, for incorporation in long-term legislation, include provisions for suspension of part of the rent for failure by the landlord to repair; for the exclusion of new and reconstructed houses from control; for enabling the tenant of "mixed" business and residential premises to claim a lease for seven years at a fair rent; for the reversal by statute of the House of Lords decision in *Moodie* v. *Hosegood* [1952] A.C. 61; for the stricter control of sub-lettings; for the revival of the system of decontrol by the landlord obtaining actual possession; and for the removal of the control of mortgages. The Institute lay great stress upon the importance of consolidating the amended rent control legislation in a single comprehensive Act. Lawyers could not agree more.

Part-time Justices' Clerks: Superannuation

SECTION 22 and Sched. V of the Justices of the Peace Act, 1949, provide for the modification of the Local Government Superannuation Act, 1937, in relation to justices' clerks and their staff. In particular, para. 1 of Sched. V provides as respects part-time justices' clerks that they shall be contributory employees if, *inter alia*, they are clerks of a class or description specified for the purpose in an order made by the Home Secretary. The Justices' Clerks (Part Time) Superannuation Order, 1952 (S.I. 1952 No. 910), which comes into operation on 1st April, 1953, now defines the class of part-time clerks who will be superannuable under the Act of 1937 as being those in receipt of a salary under s. 19 (2) of the 1949 Act of not less than £250 a year, or, where more than one clerkship is held, of salaries under that section amounting in the aggregate to not less than £250 a year.

"Guide to Government Orders"

IN our much-governed day the never-ending stream of statutory instruments, regulating this, prescribing that, ordering the other, forces itself increasingly on the reluctant attention of the practitioner of the law. Often enough he is heard to complain that he "can't keep pace with it"—and very likely, too, since the complaint in itself is strong evidence that the official "Index to Statutory Rules and Orders and Statutory Instruments in Force" is not to be found on his bookshelf. The latest edition of this invaluable work of reference, its title now mercifully abbreviated to "Guide to Government Orders," has just been published by H.M.S.O. (£4 4s. net) and indexes all instruments of general application in force on 31st December, 1951, with the exception of those made under Defence Regulations or other war emergency enactments. The guide is arranged alphabetically under subject headings, and shows the statutory powers followed by the instruments in force in exercise of those powers. A new feature in this edition is the Table of Statutes, through which the reader can readily trace the entries in the guide showing instruments made under any particular statutory power: a facility which is especially acceptable to the legal user. With this guide before him, supplemented by the monthly official lists of statutory instruments issued since the end of last year, the inquirer can be certain that no order or rule, however obscure, will be overlooked.

Taxation

ESTATE DUTY AND GIFTS INTER VIVOS

In this article it is not proposed to consider the sometimes difficult question whether, in given circumstances, there has or has not been a gift *inter vivos* of such a nature as to attract estate duty. It is here proposed to assume that there is a charge or the likelihood of a charge to duty and to consider the value to be placed on the gift, the incidence of the duty and the accountability to duty.

Valuation

Subject-matter of Gift

Before considering the value of the gift for duty purposes it is sometimes necessary to consider what was in fact the subject-matter of the gift. The only available test seems to be the nature of the property given at the moment when the gift is completed by the passing of dominion from donor to donee. The principle may be observed by comparing *Timpson's Executors* v. *Yerbury* [1936] 1 K.B. 645 with *Carter* v. *Sharon* (1936), 80 Sol. J. 511. These were income tax cases, but their relevance is that in each case a gift was made by sending drafts to the donees. In the first case, the drafts were cashed at an English bank and it was held that in English law the gift was completed when the draft was cashed and hence the gift was of English cash ; in the second it was held that by the proper law of the transaction the gifts were completed when the drafts were posted and hence the gift was of the draft, not the cash.

If this is applied to the common transaction of the provision by the donor of a house for the donee it will be seen that if B contracts to buy a house relying upon A to pay for it and A does so, then the house is derived not from A but under B's contract, whilst the gift, when completed, was of cash. If, however, A contracts to buy a house and directs that it be conveyed to B, then the gift is of a house. The more difficult case is where A gives cash to B conditionally upon B using the money to buy a house. On the one hand it can be said (and is said by Hanson, 9th ed., p. 80) that this is a completed gift of money although the gift is fettered by an obligation upon B to use it in a specified manner. On the other hand, Green, 2nd ed., p. 84, considers that the gift is not of cash unless the donee is free to use it either for the purchase of the house or otherwise.

Absolute Gift

If there is an absolute gift of a sum of money, then, if duty becomes payable, it will be payable upon that sum no matter how it has been used or expended during the lifetime of the donor. If there has been an absolute gift of property other than cash it is now settled by *Strathcona* v. *Commissioners of Inland Revenue* [1929] S.C. 800 that the property is to be valued for duty purposes as at the date of the death of the donor and not at the date of the gift. There were, it is true, certain divergencies of opinion between Lord Clyde and Lord Sands in that case, but it did not affect the decision upon the particular facts. Lord Sands thought that one should look at the matter as if no gift had taken place and value the property just as if it had remained with the donor and passed upon his death. Thus if there was a gift of a valuable racehorse which predeceased the donor no duty would be payable. Lord Clyde appeared to think that duty might be chargeable upon the value at the death of the donor of a similar horse. It seems, with respect, that Lord Sands' view is to be preferred. It is generally accepted and accords with the decision in *A.-G.* v. *De Préville* [1900] 1 Q.B. 223 that no duty was payable upon the gift of the donor's own life interest since, *ex hypothesi*, it was of no value at the time of his death.

It will thus be seen that the question whether a gift was, say, cash or a house can be of great importance. Any practitioner who is asked to advise a client who is minded to make a gift of that sort might advise his client to be guided as to the method to be adopted by his estimate of the likely course of property values over the then succeeding five years.

There is, and indeed must be, a distinction between property which has completely perished as did the racehorse discussed in *Strathcona's* case and property which has changed in form and can be traced. There is a surprising paucity of authority upon what is a most difficult subject, and where there have been gifts of stocks or shares which have been subject to some form of capital reorganisation there are many problems which can only be settled by litigation or legislation. One of the few decisions upon the matter is *A.-G.* v. *Oldham* [1940] 2 K.B. 485, where there had been a gift of shares in a company which had, at that time, large reserves. During the life of the donor those reserves were capitalised by the issue of bonus shares and it was held that duty was payable only upon the value at the death of those shares which had originally been given, and that the bonus shares were neither the property taken nor the proceeds of sale thereof nor yet investments of those proceeds of sale under s. 22 (1) (*f*) of the Finance Act, 1894. It is not proposed here, however, to consider cases of this sort but to concentrate upon the simpler cases most frequently met with.

One point of practical importance is that if the donee has spent money upon improving the property an allowance for his expenditure will be made. A simple example is where house property has been improved: others occur where there is a gift of partly-paid shares and the donee has paid the calls thereon or where the donee has paid premiums upon a policy of assurance upon the life of the donor. In the latter case, of course, the whole matter may be rendered academic if the facts are within s. 30 (1) of the Finance Act, 1939.

Settled Gifts

If there is a gift of property other than cash by way of voluntary settlement and the donor dies within five years then the property chargeable is the value of the settled fund at the date of death in the state of investment in which it then is. In such a case the gift, broadly speaking, is not the property originally settled but the settled fund as such taken for better or worse. Thus in *Re Payne* [1940] Ch. 576 there was a voluntary settlement of certain property which the deceased had contracted to sell for the sum of £10,000 together with the proceeds of sale of that property. The sale went through and by the time of the donor's death the corpus had appreciated in value to almost £50,000, and it was held that it was upon that sum that duty must be paid.

If there is a gift of cash by way of settlement it is doubtful whether duty is payable upon the cash or upon the value of the settled funds. In *Re Payne* Luxmoore L.J., took the view, and with respect it seems a very sound one, that the gift was not £10,000, being the proceeds of sale, but was the property subject to and with the benefit of the contract of sale: having reached that conclusion he applied the definition of " property " to be found in s. 22 (1) (*f*) of the Finance Act, 1894, and refused to express any view as to what would have been the liability had there been a gift of £10,000 upon trust

to invest, etc. Simonds, J. (as he then was), at first instance, and Scott, L.J., took the view that even if what was given was cash, *vis-à-vis* the beneficiaries, it was a settled fund and remained such.

INCIDENCE

The incidence of the duty does not present any difficulty of principle—the duty falls upon the donee. In *Re Beddington* [1900] 1 Ch. 771, at p. 773, it was said :—

> " When these gifts were made they were subject to a liability to estate duty which might arise on the death of the donor."

In that case the gifts had been held to be an ademption *pro tanto* of the donees' shares in the residuary estate of the donor and it was held that they should be brought in at their value after deducting the estate duty payable in respect of them.

It will be observed that the donee is none the less liable for the duty because he has parted with the actual subject-matter of the gift, and the principles of valuation are not altered by that fact. Furthermore, the donee is not in any fiduciary capacity so that his liability is not limited to such property as actually comes into his hands. From these facts some most curious circumstances may arise, although they do not seem to have come before the courts. Suppose that the racehorse discussed in the *Strathcona* case had had a different history. It might have been that, say, one year after the gift the donee had formed the opinion that it did not show much promise and had sold it for £1,000: contrary to his expectations it then distinguished itself in an important race and, when the donor died, it was still alive and worth £10,000. It would then seem that duty would be payable upon that sum, and if the free estate of the donor were more than £5,000 the donee's liability would be more than the £1,000 which he received.

ACCOUNTABILITY

It will be appreciated that accountability is quite distinct from incidence. If someone other than the donee is accountable for the duty then he is liable as between himself and the Crown to pay it, although, of course, he will have a right over against the donee for what that right is worth.

By s. 8 (4) of the Finance Act, 1894, where property passes on a death and the executor is not accountable " every person to whom any property so passes for any beneficial interest in possession . . . and every person in whom the same is vested in possession by alienation or other derivative title . . . shall be accountable for the estate duty on the property. " But by subs. (18) nothing in the section shall render liable to or accountable for duty a bona fide purchaser for valuable consideration without notice.

By s. 9 (1) of the same Act a rateable part of the estate duty upon an estate in proportion to the value of any property which does not pass to the executor as such shall be a first charge upon the property in respect of which the duty is leviable, provided that the property shall not be so charged against a bona fide purchaser for value without notice.

In considering the effect of these and other provisions it is necessary to consider separately the cases of pure personalty, of unregistered land and of registered land.

Pure Personalty

It is clear that where a third party comes to pure personalty other than for valuable consideration he takes it burdened by the charge under s. 9 (1) and is also accountable under s. 8 (4). Where he is a purchaser for valuable consideration he takes clear of both the charge and the personal liability unless he is affected by notice. In the case of personalty there are no title deeds to examine and hence a purchaser will usually have no notice of any gift and need not concern himself about the matter. But where he has actual or constructive notice within s. 199 of the Law of Property Act, 1925, he will be in the same position as the volunteer. There is an added difficulty if he comes to the property with notice of the gift but before the death of the donor. Here his notice, if it is anything, is notice of a potential claim. In Hanson, 9th ed., p. 192, it is stated that : " The notice must, it is thought, be notice of facts disclosing an actual and not a mere potential liability to duty " so that a purchaser without notice of the death of the donor is not affected. One differs with reluctance from the learned editors of Hanson, but it is felt that there is considerable risk in relying upon this view until it has received judicial approval.

Unregistered Land

A charge for death duties is registrable under the Land Charges Act, 1925, s. 10 (1), Class D (i), and it would seem from s. 10 (4), and it is certainly the generally held view, that it cannot be registered until it is, as it were, crystallised ; hence the presumptive charge which exists for at least five years after the gift is not a matter which is registrable under s. 10. As is well known, by s. 13 (2) of that Act a charge which is registrable under s. 10 is void as against a purchaser if not so registered and by s. 199 of the Law of Property Act, 1925, a purchaser shall not be affected with notice thereof. Pausing there for the moment, it is apparent that if a purchaser for value observes that there has been a gift *inter vivos* but also discovers that the donor is in fact dead he need only search the register against the proper name and if no charge is discovered he need worry no further.

The difficulty arises where he discovers a gift *inter vivos* and also discovers that the donor is still alive. He knows then that there is a presumptive charge but he also knows that such a charge is not, at that stage, registrable. Therefore he is protected by neither s. 199 of the Law of Property Act, 1925, nor s. 13 (2) of the Land Charges Act, 1925, since the charge of which he has notice is not a matter which ought at that point of time to appear on the Land Charges Register. There is, however, another provision which may or may not help him. By s. 17 of the Law of Property Act it is provided that " where a charge in respect of death duties is not registered as a land charge a purchaser of a legal estate shall take free therefrom . . ." and by subs. (2) it is provided that in such a case the charge is shifted to the proceeds of sale. It will be noted that this section might be more widely construed than either s. 13 (2) of the Land Charges Act, 1925, or s. 199 of the Law of Property Act, 1925. It does not in terms provide : " Where a charge in respect of death duties which ought to be registered as a land charge is not so registered," and it might equally well be construed as meaning " Where a charge . . . is not registered as a land charge (whether through an omission or whether because it is not capable of such registration) a purchaser," etc.

The general opinion (e.g., Dymond, 11th ed., p. 337) is that s. 17 refers only to charges existing (and presumably registrable) at the date of the purchase and not to charges existing at the date of the purchase in what might be described as an inchoate form. It therefore appears that unless and until the wider construction of s. 17 should find favour in the court a purchaser who discovers a gift *inter vivos* should requisition most carefully as to the possible existence and extent of any presumptive charge. He should not assume that

if the gift is over five years old and the donor is still alive he is therefore perfectly safe: there may have been a reservation of benefits or associated operations and it might be said that inquiries directed to that end "ought reasonably to have been made by him" within the meaning of s. 199 (1) (ii) (*a*) of the Law of Property Act, 1925.

Nor should he necessarily assume that because he has discovered the death of the donor and has drawn blank in the Land Charges Register he is free from all risk. Whilst s. 9 (1) of the Finance Act, 1894, imposes a charge which is registrable, s. 8 (4) imposes a personal liability which is not, and it therefore appears that that liability will depend upon notice pure and simple, restricted it is true by s. 199 of the Law of Property Act, 1925, but unaffected by s. 17 or s. 198 of that Act, or by s. 13 (2) of the Land Charges Act, 1925.

Registered Land

A purchaser of registered land appears to be in a much more favourable position than a purchaser under the unregistered system. By s. 73 (1) of the Land Registration Act, 1925, "A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of Her Majesty for death duties notwithstanding that notice of a claim for duties may be noted on the register under this section." It is then provided that the claim is shifted to the proceeds of sale.

There seems to be no doubt that this is strong enough to protect the purchaser from any claim under s. 9 (1) of the Finance Act, 1894, and it also seems wide enough to free him from the personal liability under s. 8 (4), although this is perhaps a little more doubtful.

G. B. G.

A Conveyancer's Diary

ROYAL COLLEGE OF SURGEONS—II

PROFESSIONAL BODIES AS CHARITABLE INSTITUTIONS

IT will be recalled that the object of the Royal College of Surgeons of England, as it appeared from a recital in the charter granted to the college in 1800, was "the promotion and encouragement of the study and practice of the art and science of surgery." The construction put upon these words by the House of Lords in *Royal College of Surgeons of England* v. *National Provincial Bank, Ltd.* (reported at p. 280, *ante*) can best be shown by quoting a passage from the speech of Lord Morton ([1952] 1 T.L.R., at p. 989). After saying that in his view the words "study" and "practice" in this context embodied two ideas, research in the laboratory and the practical experience which can only be gained by using surgical instruments on human or other bodies, and that the object of the college was to promote the art and science of surgery by encouraging each of these activities, Lord Morton went on to say: "... if this be the true construction of the original charter, can it be doubted that the college is a charity? The object just stated may be regarded as being directed to the relief of human suffering or to the advancement of education or science or to all of these ends. Each of these is a charitable end, and it cannot be doubted that in the present case there is no lack of that element of public benefit which is essential if an institution is to be regarded as a charity. I cannot find in this recital any statement that one of the objects of the ... college is to be the promotion of the interests of individuals who are carrying on their profession as surgeons, nor can I find any reference to the promotion of the interests of such individuals in any other part of this charter. I state this at once, in view of the observations of the Court of Appeal in the 1899 case ..." (That case was *Re Royal College of Surgeons* [1899] 1 Q.B. 871, the effect of which I summarised last week.)

This view, which was, broadly speaking, that of the majority of the House on the status of the college as a charitable institution, would have been sufficient to determine the question with which this appeal was principally concerned: but there was, in fact, authority to support this view in the earlier decision of the House of Lords in *Inland Revenue Commissioners* v. *Forrest* (1890), 15 App. Cas. 334. In that case the Institution of Civil Engineers claimed exemption from corporation duty under s. 11 of the Customs and Inland Revenue Act, 1885, on the ground that its property was legally appropriated and applied for the promotion of science, within the meaning of that section. It was argued on behalf of the Revenue, as it was similarly argued in *Re Royal College of Surgeons, supra*, that the principal object of the institution was the promotion, not of scientific knowledge, but of the professional interests of civil engineers, but the majority of the House of Lords would have none of this argument; in their view membership of the institution was accompanied by a certain amount of prestige which could be of use to a member in his professional capacity, but that was an inevitable consequence of membership of any society which promoted a branch of science connected with the profession in which the member was engaged, and did not affect the main object of the institution. This decision was followed by the Court of Appeal in *Institution of Civil Engineers* v. *Commissioners of Inland Revenue* [1932] 1 K.B. 149, where it was held that the institution was a body of persons established for charitable purposes only, and so entitled to the exemption from tax conferred on such bodies by s. 37 (1) (*b*) of the Income Tax Act, 1918.

The construction placed upon the relevant part of the college's charter of 1800 by the House of Lords in the present case was thus reinforced by the decisions, given on similar although not identical instruments, by the House of Lords and by the Court of Appeal in the two decisions on the Institution of Civil Engineers. This construction was radically different from that which the Court of Appeal had put on the college's charter in 1899. According to that view, one of the principal objects of the college, as evidenced by the use of the word "practice" in the expression "the promotion of the study and practice of surgery," was the promotion of the interests of those practising surgery as a profession. The view which has now been taken is that "practice" in such a context as this means nothing more than the practical experience which has to be gained by a person claiming to practise a profession before he can turn his theoretical knowledge of whatever branch of study his profession may involve to the service of mankind.

In these days of high taxation the fiscal exemptions enjoyed by charitable institutions are enormously valuable privileges, and it is obvious that all kinds of professional and scientific institutions will be examining the decision in this case in the next few months to see whether they too can claim the status of a charity, as that expression is understood in the law. In a matter of this kind each case will stand or fall on its own facts, but the present decision seems to me

to be very broadly based, and thus to show a considerable development as compared with earlier cases on this subject. In the Scottish case of *Society of Writers to the Signet* v. *Commissioners of Inland Revenue* (1886), 2 Tax Cas. 257, the claim of the society to exemption from corporation tax under s. 11 of the Customs and Inland Revenue Act, 1885, was refused by the Court of Session because " people become members of the Society of Writers to the Signet not for the purpose of studying literature and the fine arts, or science, nor yet for the purpose of being educated. They become Writers to the Signet for the purpose of making pecuniary gain by a profession, and that is the object of every member of the society " (*per* the Lord President (Inglis) at p. 272). Now if this decision had not been subsequently approved by the highest authority it might, perhaps, have been open to criticism on this ground, that the question whether an institution is charitable or not depends on the objects of the institution, and not on the motives which impel a member of the public to apply for admission. If the purpose with which some gifts to charitable institutions have been made were a proper matter for consideration in according or withholding the status of a charity to those institutions, a very curious chapter would have to be added to some of the standard works on the law of charitable trusts.

The weight to be given to the case of the *Society of Writers to the Signet* in view of the recent decision is not easy to assess. It was one of the cases relied upon by the Crown in *Forrest's* case, and in his speech in that case Lord Watson approved the *ratio decidendi* of that decision, if not expressly, then by implication, when he said of the Society of Writers to the Signet that its position, so far as its constitutional objects were concerned, was strictly analogous to that occupied in England by the Inns of Court and in Scotland by the Society of Advocates; the chief object of persons joining it, if not their only object, was to acquire the status of a qualified legal practitioner: " Their qualifications are tested before admission by examination: but when once they have become members they do nothing whatever towards advancing the science of law, unless it be by actively pursuing their profession in their individual capacity " (15 App. Cas., at p. 350).

Now the Society of Writers to the Signet was at the time of this appeal, and probably still is, what is called in Scotland a corporation by custom, not by charter, and in order to ascertain what its objects were it was necessary for the court to hear evidence on its history and its activities. It was doubtless on the strength of such evidence that it was possible to come to some sort of conclusion on the matter which, strictly speaking, seems to me to be irrelevant in an inquiry of this kind—the motives of its members in joining the society. But in the present case the House of Lords reached its conclusion on the status of the College of Surgeons, as it might be expected to have done, on the evidence of its charters alone. In an attempt to distinguish the decision of the Court of Appeal on the college's status in 1899 the college in the present case offered evidence of its activities, and this evidence was considered in detail at the hearing at first instance; but in the House of Lords each of the noble and learned lords who formed the majority (Lords Normand, Morton of Henryton, Reid and Tucker) based his opinion on the charters of the college and on the charters alone. It would appear, therefore, that if an institution can show that the objects for which it was formed, as they appear from its charter or other instrument of incorporation, are charitable objects, no further evidence of its activities is required. If that is so, then in such a case the object with which a person joins any such institution in question becomes irrelevant, and so much of the *ratio decidendi* of the case of the *Society of Writers to the Signet* as depends on the motives of members of the institution would be inapplicable. But the question would still remain whether, in all the circumstances, the institution in question is a charity, and for the purposes of this broad question the validity of Lord Watson's test (" when once they have become members they do nothing," etc.) is obviously a matter for consideration in relation to most professional institutions, whose active interest in their members usually ceases, except for disciplinary and social purposes, after the latter's admission.

Here again it should be remembered that the charters of the College of Surgeons, on the construction of which the recent decision wholly depended, did not specify the educational work performed by the college. Indeed, this was considered, apparently, to be wholly irrelevant. The byelaws of the college were extensively referred to in argument, and also by Lord Cohen in his dissenting opinion, but the only other member of the House to mention them was Lord Morton of Henryton, who said that he could not there find any statement of the objects of the college " as distinct from the methods by which these objects are to be pursued." If, then, the objects of an institution can be gathered sufficiently from its instrument of incorporation or otherwise in such a way as makes it possible to exclude evidence of the kind which proved fatal to the society's claim in the case of the *Society of Writers to the Signet*, and those objects are clearly charitable objects, as, e.g., tending to the advancement of education or science, the fact that the education which it affords its members stops at some point in their careers, and does not continue (as was true in *Forrest's* case) throughout their connection with the institution, appears to be immaterial. If that is the right lesson to draw from the recent case, the authority of the case of the *Society of Writers to the Signet* is much weakened; and as that decision, together with that of the Court of Appeal on the College of Surgeons in 1899, has been the main stumbling block in the path of professional and learned institutions seeking to attain charitable status, it is well worth while for such institutions to reconsider their positions from this point of view.

" A B C "

OBITUARY

Mr. W. F. BROGDEN

Mr. William Frederick Brogden, solicitor, of Lincoln, has died at the age of 70. Admitted in 1907, he had been Clerk of the Peace for Lincoln since 1931, when he succeeded his father in that capacity. He was also deputy registrar for the Lincoln group of county courts.

Mr. T. HOPPITT

Mr. Thomas Hoppitt, solicitor, of Broadstairs, died on 29th April. He was admitted in 1925.

Mr. H. G. MASON

Mr. Harold Gluyas Mason, solicitor, of Eastbourne, died on 24th April, aged 47. He was admitted in 1928.

Mr. R. G. ROSE

Mr. Reginald George Rose, solicitor, of Bedford, died on 3rd May, aged 59. Admitted in 1919, he was appointed Coroner for Bedford in 1928 and for North Bedfordshire in 1939. He was President of the Bedfordshire Law Society in 1938, 1945 and 1946.

Landlord and Tenant Notebook

CONSTRUCTION OF AGREEMENT "NOT TO SUB-LET"

LAST year's new authorities included three which might be said to illustrate the adaptability of the law in general and of that of landlord and tenant in particular. In *Wallis* v. *Semark* [1951] 2 T.L.R. 222 (C.A.) Denning, L.J., remarked: "Nowadays a promise by a tenant to accept an invalid notice as valid will be binding on him if it was intended to be binding, intended to be acted on, and was in fact acted on"; in *Mitas* v. *Hyams* [1951] 2 T.L.R. 1215 (C.A.) the court (of which Denning, L.J., was a member) decided that an oral variation of a lease under seal is valid if acted upon; and in *Stromdale & Ball, Ltd.* v. *Burden* [1951] 2 T.L.R. 1192 Danckwerts, J., holding that formal delivery is not now a condition precedent to the validity of a deed, contrasted past and present in these terms: "Time was when the placing of a party's seal was the essence of due execution . . ."

Another decision of the same year, however, showed that reconsideration of established rules will not always be lightly undertaken. This was *Cook* v. *Shoesmith* [1951] 1 K.B. 752 (C.A.), in which the court, following or applying *Church* v. *Brown* (1808), 15 Ves. 258, and *Grove* v. *Portal* [1902] 1 Ch. 727, declined to read an agreement not to sub-let as prohibiting a tenant from sub-letting part of the house he had taken.

It will be convenient to say something about the earlier cases and their background first. A general examination of the position suggests that there have been conflicting forces at work, emanating from different approaches to the nature of the relationship of landlord and tenant. There are enactments and decisions which reflect the view that a lease is a sale *pro tanto*, that no strings should be attached to a grant, that if a landlord does wish to prevent his tenant from doing what he likes with the demised premises he must be careful to stipulate accordingly. As against these, many unrepealed statutes have enlarged the rights of landlords (notably in the matter of distress for rent); and the first Conveyancing Act, that of 1881, when it crystallised the rules governing relief against forfeiture, left breach of covenant not to assign or sub-let unrelievable; it was the Law of Property Act, 1925, which excluded this offence from the exceptions.

The leading case relied upon by anyone who has to contend that some particular provision does not restrain a tenant from committing some particular act of alienation is *Church* v. *Brown* (1808), 15 Ves. 258. In fact, the authority consists of a *dictum*, admittedly a considered *dictum*, uttered by Lord Eldon in the course of his judgment. The plaintiffs, partners in a grocery business, had entered into possession of premises under an agreement for a lease. They had decided to dissolve the partnership and had obtained a decree of specific performance. The draft submitted by the defendant contained a covenant restricting alienation, supported by a forfeiture clause, and the plaintiffs objected. The question was, therefore, whether such a covenant would be "usual." Lord Eldon, who admitted that his convictions had become less strong during the course of the argument, held that the landlord was entitled to what was usual in the circumstances *and did not contradict the incidents of the estate belonging to a lease*, one of which is the right to have the estate without restraint beyond what is imposed upon it by operation of law, unless there is an express contract for more. The learned Lord Chancellor then embarked upon some *reductio ad absurdum* reasoning which constitutes the authority so often relied upon. The covenant which had been represented to be "usual" would not prevent under-letting; if it did, it would not prevent the tenant from parting with possession; and parting with possession of premises would not include parting with possession of part of premises. Again and again, especially in the period between the passing of the Conveyancing Act, 1881, and the enactment of the Law of Property Act, 1925, tenants have benefited by the somewhat subtle distinctions so drawn.

The effect on conveyancing could soon be seen in the case of *Roe d. Dingley* v. *Sales* (1813), 1 M. & S. 297, in which a lease was found to contain a tenant's covenant not to demise, lease, grant or let the demised premises or any part or parcel thereof, or convey, alien, assign or set over the indenture or his or their estate therein, or any part thereof, to any person whomsoever, without the special licence, etc. The defendant entered into a somewhat elaborate agreement with one P, by which the latter "should have the use of the back chamber exclusive of his [the defendant's] family, the saw-lodge, the whole length of the cow shed to the stable, and any part of the yard for laying timber, or otherwise"; then P was to have joint use with the defendant of other parts of the premises; and finally, the document expressed their intention of entering into partnership in the business of a general shopkeeper. An argument that, there being no rent reserved, the defendant remained tenant, and was merely accommodating P with lodging, failed; and Ellenborough, C.J., gave us what might be called the landlord's point of view when he said: "It is a parting with the possession of some part of the demised premises; whether gratis or for rent is very immaterial to the landlord, who must guard against having any other than the person in whom he confided as tenant let into possession without his consent." The decision has often, but not always successfully, been prescribed as an antidote to *Church* v. *Brown*.

But shortly before the Law of Property Act, 1925, became operative, there was a number of decisions in which tenants scored because the exclusion clause in s. 14 (6) of the Act of 1881 was content to specify "the assigning, under-letting, parting with the possession, or disposing of the land lease"; nothing about "or any part thereof." I would mention specifically *Russell* v. *Beecham* [1924] 1 K.B. 525 (C.A.), in which, in spite of existing authority, judicial opinion was found to differ on the effect of a tenant's covenant "not to assign or part with this lease or the premises hereby demised or any part thereof" without the landlord's consent; the tenant had sub-let, or been party to the sub-letting of, part of the premises, but no forfeiture notice had been served. For present purposes I wish to cite a passage in the judgment of Atkin, L.J.: "In ordinary usage the words 'part with' are ambiguous. A man, if asked whether he had parted with his house, might say 'No, I have not parted with my house, though I have let it furnished for six months to a tenant'; or he might say 'Yes, but only for six months'."

And in a somewhat unusual case earlier in this century, *Grove* v. *Portal*, *supra*, Joyce, J., held that a covenant in a lease of fishing rights not to under-let, assign, transfer, or set over, or otherwise by any act or deed procure, the said premises to be assigned, transferred, or set over unto any person or persons whomsoever was not infringed when the tenant granted a licence to a third party, *Church* v. *Brown* governing the position.

The facts of *Cook* v. *Shoesmith*, *supra*, were that the defendant signed a document in these terms: "Re 53 Marine Parade,

Hove. I hereby agree to rent the above house as from July 15th, 1944, at the rate of £65 per annum exclusive of rates, payable in advance on Saturday of each and every week in the sum of £1 5s. and I further agree not to sub-let. It is agreed that the tenancy can be determined, etc." There was no forfeiture clause. The question was whether the tenant had broken his agreement, and thereby jeopardised his right to Rent Act protection, by sub-letting two rooms, the landlord contending that in this case "not to sub-let" meant not to sub-let the whole or any part of the demised premises. His argument was rejected. Somervell, L.J., applied the *Church* v. *Brown dictum* and *Grove* v. *Portal* and said it would be very inconvenient to vary the rule according to whether or not there was a forfeiture clause, though the presence of such had undoubtedly done much to influence such decisions. Jenkins, L.J., said the landlord's argument came too late, and "upon the natural and ordinary construction of the document in question it is reasonably plain that what the tenant agreed not to to sub-let was the subject-matter of the tenancy, that is to say, 53 Marine Parade, Hove." Birkett, L.J., agreed.

I cannot but feel that, while the *stare decisis* principle is entitled to respect, more might have been done at least to distinguish this home-made document from such as were visualised in *Church* v. *Brown* and examined in the fishing rights case of *Grove* v. *Portal*. Apart from the change brought about by the Law of Property Act, 1925, showing that the "leaning against forfeiture" policy explained many of the older authorities, and apart from the fact that (as *Lewis* v. *Reeves* [1951] 2 T.L.R. 958 (C.A.) recently emphasised: see 95 SOL. J. 797) the landlord of a controlled dwelling-house may be prejudiced far more by a sub-letting of part than by a sub-letting of the whole, I suggest that if the question had been approached in the way in which Atkin, L.J., approached that in *Russell* v. *Beecham* the conclusion might be different. In ordinary usage, at all events, if a tenant were asked: "Do you sub-let?" he would, I submit, certainly understand the question to cover sub-letting of part. R. B.

HERE AND THERE

PLAYS FOR LAWYERS

CONSIDERING how fond the theatre and the cinema are of borrowing characters and situations from the law, it is rather strange that the entertainment world never really bothers to foster or encourage dramatic criticism in the legal Press. Whenever a general publisher produces a book which he thinks has a legal interest, along come the review copies. But it is otherwise with first-night shows. This is odd, because anyone who has ever had anything to do with lawyers must know that there's nothing they enjoy so much as their own particular brand of "shop," no matter where it may happen to turn up. I have discussed, or tried to discuss, plays with a High Court judge of the highest eminence in his own particular line. It was barely a month or two since I had happened to notice him in the audience at "Ring Round the Moon." Since then the play had passed so completely from his recollection that he did not even remember having seen it. But "Libel," the play by Edward Wooll, Recorder of Carlisle, which you may remember consists entirely of a trial in the High Court, he could recall in every detail of plot and character. Though it could not have been less than fifteen years since he saw it, it stood out for him from the mists of time with all the delightful vividness of a brilliantly drawn statement of claim tenderly remembered. Lawyers are decidedly prone to take their pleasures technically, and once they were sure that there was a nice bit of law in a play you could hardly keep them away.

"THE VOYSEY INHERITANCE"

As it happens, two of the smaller London theatres have recently put on plays with a very strong legal interest. First of all there is the brilliant revival of "The Voysey Inheritance," by H. Granville-Barker, at the Arts. As a matter of fact one rather hesitates (in the public interest) to recommend this play to solicitors, lest it might put ideas into their heads. Just as gangster films are supposed to inspire little boys to highway robbery and as Red Indian films certainly have been known to tempt them to arson (see *Yachuk* v. *Oliver Blais & Co., Ltd.* [1949] A.C. 386), might not this play, one wonders, produce the most catastrophic effects on impressionable members of The Law Society? Well, we'll risk it, so here, for their benefit, is a notion of the plot. Voysey & Son are an old-established family firm with offices in Lincoln's Inn. (The general appearance of the premises rather suggested Stone Buildings, save that I don't recall ever seeing any panelling there.) The senior partner has a large family whom he has brought to maturity in the lap of Edwardian luxury—the year is 1905. One son is a King's Counsel, another the junior partner in the firm. The play opens on the day that old Mr. Voysey lets his junior partner into the innermost secrets of the firm's affairs. He has been speculating with the trust funds in the firm's hands and just now there is a deficit of about £200,000. He still has about £100,000 and, thanks to a Napoleonic genius for financial gambling, he has never failed in the punctual payment of the periodic sums due to the clients nor has he been unable to wind up any estate that had to be wound up. So far no client has been a thought the wiser or a penny the poorer for his goings on. The son, full of professional scruples and honourable ideals, is inexpressibly shocked. The father, cool, capable, self-confident and completely unrepentant, justifies his conduct with Shavian spirit. As a matter of fact the system had started as far back as his own father's time and, as a young man, he himself had been faced with the choice between letting the cat out of the bag and ruining the clients or continuing to cook the accounts in the hope of eventually squaring them. The situation is further complicated for the present head of the firm by the fact that his respectable old managing clerk (who has to maintain at Cambridge a son destined for the Bar) knows the secret and is blackmailing him respectfully, discreetly and with most considerate moderation. Very soon after making these embarrassing revelations Mr. Voysey senior catches a chill and dies suddenly. What will his son do? Will he take up the Voysey inheritance or pull down the firm about his own and the clients' ears? It is never fair to reveal an author's plot. So I will do no more than heartily recommend a play which is at the same time serious, extremely witty and technically sound both legally and dramatically.

MIXED PROCEDURE

AT the little Watergate Theatre in Buckingham Street we have "The Vigil," by Ladislas Fodor. Its three acts consist entirely of a court scene, in which the subject-matter of the trial is the evidence for and against the Resurrection of Christ. It uses the trick (no longer novel but still quite effective) of putting all its characters into modern dress—Governor Pilate, in appropriate uniform, Lady Procula, his charming wife, Senator Joseph of Arimathea, Peter the fisherman (in jersey and sea-boots), Mary Magdalene, cross-examined as to credit on the basis of her former life in the *demi-monde*. The trouble for the producer on an English stage was that the play was written for America. What was to be done about the court procedure and the lawyers? Were they to be left full in their trans-Atlantic idiom or were they to be translated or half translated into English? It was a middle course that was adopted. The text of the play was left untouched; the

visual setting became English. The public in general have such odd ideas about what goes on in a court of law that they probably noticed nothing queer, but to a lawyer it added a lot to the interest of the play. The judge, in full-bottomed wig and scarlet robe, bore a very convincing resemblance in appearance and general demeanour to Devlin, J. The two counsel wore the wigs and robes of junior barristers and with them assumed an anglicised technique of advocacy a lot more restrained than is usual in the tribunals of Filmland. The unfamiliar element was apparent in the chair for the witnesses and in the intermittent interruptions of the evidence by one or other of the counsel—"objection," "objection sustained" or "objection overruled." At one tense moment the learned judge brought his gavel into action. No American court scene is complete without that moment. I hope all this does not sound pernickety. The average audience wouldn't notice a thing of all this and the play itself is extremely interesting and well produced.

SECOND THOUGHTS

A FRIEND more learned than I has been arguing with me about "The Voysey Inheritance," contending that the secret could never have been kept after the death of Voysey senior. First of all, the estate would have had to be valued for the purposes of probate. But since, despite the enormous deficit, there was still a very large sum in his hands, would that have presented an insuperable technical difficulty, once one had mentally adjusted oneself to a course of deceit? There were, of course, death duties to be coped with, but half a century ago they were not yet ruinous and, similarly, the various charitable legacies bequeathed by the deceased would, no doubt, have been within the scope of the assets in hand. His family, of course, were ready to renounce their claims under his will for the sake of keeping the secret. So long as all the clients didn't ask for all their capital simultaneously I think it could just have been managed. Perhaps there have been occasions in real life when it was managed.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Solicitors' Costs

Sir,—The article under the heading "*Giles* v. *Randall* Reconsidered" in your issue of the 3rd May, combined with the case of *Gibbs* v. *Gibbs* [1952] 1 All E.R. 943, leads me to inquire whether it is really essential in the public interest that solicitors' costs in contentious matters should be calculated in accordance with the present archaic system. Furthermore it is most unfortunate that this system has been perpetuated in the Legal Aid Scheme, with the addition of further complications in the shape of two additional columns, a percentage payment, and delay.

In *Gibbs* v. *Gibbs*, the solicitors for the petitioner are to be congratulated on bringing the matter before the court, and while it is depressing to note the amount of work and time that the court, counsel and solicitors spent on a matter of £6 5s. 8d., disallowed by the Registrar, the principle at stake was one of great importance.

Many solicitors with whom I have discussed the matter feel strongly that the whole system of the preparation of bills of costs (as opposed to the scale of remuneration which is equally out of date) needs immediate overhaul for the following reasons:—

(1) It is absurd that on a taxation of costs members of the profession should be occupied in wrangling whether the unfortunate solicitor should be paid the price of one packet of cigarettes or two packets of cigarettes for work which could either be a mere matter of sending the office boy round to the Registry, or, alternatively, drawing a document which demands skill, care and integrity.

(2) There are not the experienced staff available nowadays who can spend hours of time drawing lengthy itemised bills of costs. Furthermore, such staff are highly paid and must occupy their time on remunerative work rather than futile quill-driving.

(3) It is ridiculous to expect either clerks or solicitors to spend their time counting words in documents. Computation of costs by folios is really the maddest and most mediæval part of the whole charade.

(4) The system really boils down to a scale based on the number of words in the documents the solicitor prepares or the number of times he or his clerk has to attend at the Registry. This leads to the odd result that a solicitor who uses long words is paid less than a solicitor who uses a multitude of words of one syllable. Secondly, a pettifogging solicitor or clerk can conceivably multiply the costs in a simple matter by unnecessary applications.

(5) Work of exceptional delicacy or difficulty is judged by roughly the same yardstick as a commonplace matter.

Again, there must be few solicitors who actually carry out Legal Aid matters who are not exasperated by the costs aspect of the scheme. The conduct of these matters involves responsibility both to the clients and the Area Committee which imports extra correspondence and interviews, while on the other hand remuneration is cut down by 15 per cent. and there is delay in payment. In other words, the profession finance their clients and the Scheme for considerable periods.

Generally speaking, the legal profession is being forced into a corner over remuneration, in that the authorities are obdurate over any amendment of the system. The result is that the rewards of labour fall and the profession ceases to be attractive. In the end one of the two learned professions will be forced to accept altogether lower standards, and this will be a serious matter for the ordinary citizen, who is dependent for his freedom on a completely independent and strong legal profession. The Law Society, despite their great efforts, are quite unable to make the authorities realise the injustice from which the legal profession is suffering by reason of its archaic system of remuneration and unsatisfactory scales, coupled with the fact that the profession is not its own master in this particular sphere, whereas certain other professions are being more than generously treated. It was interesting to note that a professional gentleman who graduated from the fairground to the National Health Scheme recently stated in court that his earnings had increased from £600 per annum to between £5,000 and £6,000 per annum on the inception of that Scheme.

It is my contention that the attitude of the legal profession towards these problems is far too timid, and I should be interested to hear whether the average practising member of the profession is in agreement with the views I have expressed. Furthermore, it is the writer's opinion that the legal profession should adopt some more striking method of bringing to the notice of the Statutory Committee and the Government, the discontent that exists in the profession at the shabby way it is being treated.

Coventry. A. J. NEWSOME.

Longevity among Solicitors

Sir,—In the interests of historical accuracy I should like to mention that the second partner in the old firm of Remnant and Penley, of 52 Lincoln's Inn Fields, mentioned in your Current Topic under the above heading on 3rd May, was the son, not the brother, of Aaron Penley, the water-colour artist. His Christian name was Claude, and the family tradition is that his father gave him the name to show his intense admiration of the famous French painter.

R. H. PENLEY.

Dursley,
Gloucestershire.

Safe Custody of Wills

Sir,—In reply to the letter from Mr. J. F. Josling in your issue of the 1st March, 1952, the Record Offices of the various Services will, it is understood, give information as to whether a person who has served in the Forces has filed a will with that office.

I have recently had occasion to inquire whether an airman killed a few months ago in an air crash left a will in the custody of the Royal Air Force Record Office. I was informed in reply that "there is no trace at the late airman's unit or at the Royal Air Force Record Office of a will having been executed by him."

It appears from this that the Service concerned makes inquiries both with the unit and in the Record Office of the arm concerned.

G. W. T.

London, S.W.1.

Long Service

Sir,—We have great pleasure in informing you that Mr. John Henry Dunmore has [on 23rd April, 1952] completed seventy-five years' continuous service with this firm and its predecessors.

On the 23rd April, 1877, he characteristically walked straight from school to the office and busied himself with the office despatch. Since that day he has rendered loyal, devoted and valued service to four different principals, and for the last twenty years he has been managing clerk and cashier at this office. He is now in his eighty-ninth year and he attributes his long and successful service to hard work and regular habits. Up to the new year, Mr. Dunmore had attended regularly at the office at 9 a.m. each morning and worked a full day, but we are sorry to say that he has been rather unwell recently and he has not been able to celebrate his seventy-fifth anniversary at the office.

We hope, however, that he will soon be restored to health and that the firm will continue to have the benefit of his great experience.

CRANE & WALTON.

Ashby-de-la-Zouch.

REVIEWS

"Current Law" Income Tax Acts Service. ["Clitas."] General Editor, JOHN BURKE, Barrister-at-Law; Consulting Editor for Scots Law, H. A. SHEWAN, O.B.E., Q.C., Advocate; Managing Editor, R. R. KINGSLAND, B.A. (McGill); Editor-in-Chief, Miss H. G. S. PLUNKETT, Barrister-at-Law (formerly one of H.M. Inspectors of Taxes); Contributors, P. W. E. TAYLOR, Barrister-at-Law, and ARTHUR LEOLIN PRICE, Barrister-at-Law. 1952. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd. £3 10s. net.

"Clitas" is what a Frenchman would describe as a truly formidable work, and its publication within so short a time after the passing into law of the Income Tax Act of 1952 is a matter upon which those concerned are to be congratulated. Stoutly bound in loose-leaf form, and well designed both for ease of reference and amendment, it is a most workmanlike production, although the practitioner who will have it as his companion for years to come might wish for a format more pleasing to the eye.

"Clitas" is not a book but a service, built round a verbatim reprint of the Act of 1952 with which are included the unrepealed provisions of no fewer than forty-two earlier Acts, together with Statutory Regulations and the Double Taxation Orders. These by themselves would make a useful work, but the value of "Clitas" is enhanced by detailed annotations of each section of the Act of 1952, indicating the source and giving cross-references both to other relevant provisions and to Konstam's Law of Income Tax, together with extensive citations of decided cases.

The service which the publishers undertake includes furnishing subscribers year by year with annotated copies of the Budget resolutions, the Finance Bill and the Finance Act very shortly after they respectively appear. The Finance Bill finds a place in a separate section for pending legislation and an ingenious referencer enables the busy practitioner to ascertain at a glance when considering a particular section of the Act of 1952 whether amendment or repeal is in prospect. The service is in future to be supplemented by a section on profits tax and excess profits levy under the joint editorship of Mr. Desmond Miller and Mr. H. Major Allen.

Beyond dispute the publishers have produced a work of weight, but this is a fair price to pay for the advantage of possessing a work which is truly comprehensive. Despite its size, "Clitas," like its parent, the second volume of Konstam's Income Tax, reflects credit on the printer for its combination of clarity with economy of space.

A minor criticism is that the numerous Double Taxation Orders might with advantage have been published in a separate cover, occupying as they do nearly 250 pages; their advantage to the practitioner would be greatly enhanced if they were prefaced with a note on the common form of agreement and an outline of the rules for computing the relief.

The work, which is completed with tables of cases and statutes and a comprehensive index, should meet with a good reception in the legal and accountancy professions. It is fitting to conclude this brief review of an ingenious and practical publication with a mention by name of the Editor-in-Chief, Miss H. G. S. Plunkett.

The Income Tax Act, 1952. By Miss H. G. S. PLUNKETT, Barrister-at-Law (formerly one of H.M. Inspectors of Taxes), assisted by P. W. E. TAYLOR, Barrister-at-Law, and ARTHUR LEOLIN PRICE, Barrister-at-Law; Consultant for Scots Law, H. A. SHEWAN, O.B.E., Q.C., Advocate. 1952. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd. 30s. net.

This annotated reprint of the Income Tax Act, 1952, by Miss H. G. S. Plunkett, is the foundation upon which the publishers have built the "Clitas" service reviewed above. The function of a guide book through the 532 sections and 25 Schedules of the consolidation Act could scarcely have been better carried out. The unavoidable disadvantage of the larger work is its lack of portability, and all practising in the income tax sphere will welcome a work which can be carried to an appeal or a conference in a brief case and is adequate to cover problems, perhaps the majority of those of daily occurrence, lying within the confines of the principal Act.

Under each section is printed a note of its derivation and of other relevant statutory provisions, together with references to Konstam's Law of Income Tax and a useful commentary which includes the citation of decided cases. The index is full and contains an extensive section devoted to words and phrases.

Kerly's Law of Trade Marks and Trade Names. Seventh Edition. By R. G. LLOYD, M.A. (Cantab.), B.Sc. (Lond.), of Gray's Inn, Barrister-at-Law, and the late F. E. BRAY, K.C. 1951. London: Sweet & Maxwell, Ltd. £7 7s. net.

This edition is founded on the Trade Marks Act, 1938, which, in the words of Mr. R. G. Lloyd, "is a complicated piece of legislation abounding in cross references, provisos and exceptions and containing some sections drafted in language which the courts have described as 'turgid and diffuse'." In addition to the law contained in the Act and the Trade Mark Rules, 1938, this work deals with the relevant parts of the common law, in particular the action for "passing-off" and the provisions of other statutes, such as the Merchandise Marks Act, 1887, as amended. The civil statutory law relating to trade marks is contained in the Act of 1938, the criminal law of false marking in the Merchandise Marks Act, 1887. The book thus contains a comprehensive and detailed treatment of all aspects of trade mark law, inasmuch as the registration of foreign and colonial trade marks and the International Convention are likewise discussed (Chapter XXI).

The editors have evidently attempted to retain the general lay-out of the former editions in so far as the headings and the main structure of the majority of the chapters are concerned. They have, however, treated the question whether there is a deceptive resemblance between marks, trade names

and the appearance of goods of different traders, in a new chapter entitled "Deceptive Resemblance" (Chapter XVII); this approach is sound, because it elaborates considerations common to the decision of such questions and avoids repetition. The revision and treatment of the work is satisfactory. The latest case law is included and accurately assimilated. In particular, the treatment of *Derek McCulloch* v. *Lewis A. May (Produce Distributors), Ltd.* (1948), 65 R.P.C. 58, known as the "Uncle Mac" case, and *Aktiebolaget Manus* v. *R. J. Fullwood and Bland, Ltd.* (1948), 65 R.P.C. 329; (1949), 66 R.P.C. 71, deserves praise. How successful the modernisation of the work is, as far as new case law and statutory matter are concerned, may be judged from the fact that even the Trading with the Enemy (Custodian) (No. 2) Order, 1951, is included. The best parts of the book are those dealing with the common law of trade marks; in particular the chapter on passing-off (Chapter XVI) is outstanding and a masterly survey of that difficult branch of law. The chapters dealing with the statutory aspects of the subject reveal the intricacy of the topic and, in part, tend to be diffuse, a tendency which in a treatment of the size of the present one can only be overcome by strict rational arrangement of the subject-matter. Two minor observations may be added: it is doubtful whether the enumeration, on pp. 536–541, of cases where injunctions have been granted and have been refused, is really helpful to the practitioner; a tabular representation indicating shortly the point decided would have been of greater use. Further, while the treatment of *Tussaud* v. *Tussaud* (1890), 44 Ch. D. 678, and similar cases is excellent and very useful, the treatment of ss. 17 and 18 of the Companies Act, 1948, is so perfunctory that it could have been omitted without doing injustice to the subject-matter of the treatise; that branch of the law pertains to company law and not to the law of passing-off. The appendices are comprehensive; apart from the Trade Marks Act, 1938, the Merchandise Acts and other pertinent enactments, they set out fully the Trade Marks Rules, 1938. Particular praise should be given to the index, which comprises no less than sixty-four pages; the leading cases are noted by their customary reference and the user will have no difficulty in finding, e.g., the "Uncle Mac" case under that name.

In its present form, Kerly on Trade Marks will continue to be relied upon by members of the legal profession and others concerned with the law of trade marks as the leading treatise on the subject and an authoritative statement of the law.

NOTES OF CASES

HOUSE OF LORDS

JOINDER OF CHARGES: ADMISSIBILITY OF EVIDENCE

Harris *v.* Director of Public Prosecutions

Viscount Simon, Lord Porter, Lord Oaksey, Lord Morton of Henryton and Lord Tucker. 9th April, 1952

Appeal from the Court of Criminal Appeal (*sub nom. R.* v. *Harris* [1952] 1 T.L.R. 350; 96 Sol. J. 152).

The appellant, a policeman, was charged on an indictment containing eight counts alleging office breaking and stealing money. A certain firm occupied premises in Bradford Market, which was closed at night, but accessible through a wicket gate. Police were on duty there, and there was a mess-room for the officer on duty. On a number of occasions between April and July, 1951, the premises were broken into and sums of £1 to £10 taken from the till, larger sums being left. On every occasion when a theft took place, the appellant was the officer on duty. During a period in which he was on leave, no theft took place. On 11th July, a burglar alarm was secretly installed, connected with detectives stationed nearby, and marked money was put into the till. On 22nd July, the appellant came on duty at 6.5 a.m. At 6.27 the alarm rang, the detectives ran to the market, and found the appellant standing at the entrance of a passage leading to the premises. They found that part of the money had been taken from the till. Soon afterwards the appellant joined them, looking pale and agitated. On his way he had passed a coal bin, in which marked money was afterwards found. The eighth count alleged breaking and theft on this occasion; the other seven counts related to previous incidents. At the trial, counsel for the appellant submitted that the eighth count should be tried separately on the ground of prejudice, there being, it was contended, no case to go to the jury on the other counts. Pearson, J., refused the application on the grounds that the charges could properly be included in one indictment under r. 3 of the rules made under the Indictments Act, 1915, and that the appellant would not be embarrassed or prejudiced. The accused was convicted. On the rejection of his appeal by the Court of Criminal Appeal, he appealed to the House of Lords.

VISCOUNT SIMON said that the trial judge had properly exercised his discretion in disallowing a separate trial on the eighth count. The main contention was that evidence of thefts carried out at times when the appellant was not shown to be near the premises could not be considered as material for consideration by the jury on the charge in the eighth count. The principle governing the matter had been laid down in *Makin* v. *A.-G. for New South Wales* [1894] A.C. 57, where it was said that while it was not competent to adduce evidence tending to show that the accused had been guilty of crimes other than those charged, yet the mere fact that the evidence adduced tended to show the commission of other crimes did not render it inadmissible if relevant to the issues before the jury, e.g., to show that the act was intentional, or to rebut a possible defence. That did not mean that the evidence must be withheld until the anticipated defence was set up. There was also a rule of judicial practice referred to in *Noor Mohamad* v. *R.* [1949] A.C. 182, where it was said that the judge ought to consider whether the proposed evidence was sufficiently substantial to make it desirable in the interests of justice that it should be admitted. It was clear that "similar facts" could not be admitted unless they were connected in some way with the accused and with his participation in the crime (see *Thompson* v. *Director of Public Prosecutions* [1918] A.C. 221). In the present case, the judge, in his summing-up, did not warn the jury that the evidence on the earlier counts was not in itself a confirmation on the charge on the eighth count, and that they should not be swayed in their decision on the eighth count by that evidence. They might well have been so swayed in fact, and it could not be assumed that a reasonable jury, properly directed, would have reached the same conclusion. Accordingly, the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, did not apply, and the appeal must be allowed.

LORD PORTER, LORD MORTON OF HENRYTON and LORD TUCKER agreed. LORD OAKSEY, dissenting, said that while he agreed with the principles stated by Viscount Simon, he did not consider that they were applicable to the present case, and also considered that the summing-up was proper. Appeal allowed.

APPEARANCES: *Henry Burton*, Q.C., and *R. Lyons* (*Sidney Torrance & Co.*, for *J. Levi & Co.*, Leeds); ***Sir Lionel Heald***, Q.C., A.-G., *H. Hylton-Foster*, Q.C., and *J. S. Snowden* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

SALE OF GOODS: FAILURE OF BUYER TO OPEN CONFIRMED CREDIT: MEASURE OF DAMAGES

Trans Trust S.P.R.L. *v.* Danubian Trading Co., Ltd.

Somervell, Denning and Romer, L.JJ. 28th March, 1952

Appeal from McNair, J. ([1952] 1 T.L.R. 13).

On 1st September, 1950, steel makers in Belgium offered 1,000 tons of steel to the F company, payment to be made by irrevocable credit opened at the same time as the order. The F company accepted on 9th September, and gave an option to the A company on the steel until the end of September. The A company agreed to sell the steel to the plaintiffs, who entered into negotiations to sell it to the defendants, with a view to its further sale by the defendants to the L corporation in the United States. As neither the plaintiffs nor the defendants could finance the transaction (as both knew) the agreement for

sale finally arrived at provided that the defendants would procure the L corporation to open a confirmed credit in favour of the A company. Owing to some misdescription of the goods, the negotiations were delayed, and the A company obtained an extension of the option until 17th October. On 14th October the plaintiffs notified the defendants that 17th October was the latest date by which the credit must be opened. The credit was not opened, and the plaintiffs sued the defendants. McNair, J., held that the defendants were in breach by reason of their failure to procure the credit; that the plaintiffs were entitled to damages equivalent to their loss of profit on resale, as such loss of profit must have been in the contemplation of both parties as the result of such a breach, when the parties were unable to finance the transaction themselves. He further granted the plaintiffs a declaration that they were entitled to be indemnified by the defendants against any damages which they might have to pay to the A company. The defendants appealed.

SOMERVELL, L.J., said that on the clear finding below, that both parties were aware of each others' impecuniosity, so that the obtaining of the credit was essential to the performance of the contract, the plaintiffs were entitled to damages as measured by their loss of profits. As Lord Wright had said in *Monarch Steamship Co., Ltd.* v. *Karlshamns Oljefabriker (A/B)* [1949] A.C. 196, parties who were impecunious would reasonably anticipate such a loss to follow from a breach. The ordinary rule was that, when there was a failure to pay money, interest only could be recovered; but here the failure was to procure a credit; and further, the rule had no application where the failure to provide money or credit could be and was accepted as a repudiation of the contract; in such a case the seller was entitled to the damages naturally flowing from the breach. As to the declaration that the defendants were liable to indemnify the plaintiffs, it had not been shown that the defendants knew that the A company were also impecunious and in need of the credit, and there was not sufficient evidence to justify the extension of the principle applicable to the money claim to this claim. Accordingly, the appeal should be allowed in respect of the declaration granted below, and dismissed in respect of the money claim.

DENNING and ROMER, L.JJ., agreed. Appeal allowed in part.

APPEARANCES: *Rodger Winn* (*A. & G. Tooth*); *A. A. Mocatta*, Q.C., and *T. G. Roche* (*Hardman, Phillips & Mann*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LEVEL CROSSING: RAILWAY EXECUTIVE'S DUTY OF CARE

Lloyds Bank, Ltd. *v.* Railway Executive

Somervell, Denning and Romer, L.JJ. 8th April, 1952

Appeal from Lloyd-Jacob, J.

The plaintiffs were the executors of a motorist who was killed in a collision with a train at a level crossing, which had been an accommodation crossing, but which had come to be used more extensively by the public. Lloyd-Jacob, J., gave judgment for the plaintiffs, holding that the defendants were in breach of statutory duty, and were negligent at common law by reason of failure to provide a board warning trains to whistle. The defendants appealed.

SOMERVELL, L.J., said that the defendants had been in breach of statutory duty. As to negligence, while the crossing had been an accommodation crossing, the limited class using it could make their own arrangements; but a new state of affairs arose when the crossing was used by the public, and the failure to provide a whistling board constituted negligence.

DENNING, L.J., agreed that there had been a breach of statutory duty. The old Acts under which the railways worked did not require the railways to provide in any way for increased traffic at bridges and level crossings; in general the statutory duties were now what they had been a hundred years ago. But increased traffic meant increased danger, and the common law had not stood still. As danger increased, so the precautions which the defendants were under a duty to take must increase. They need not go so far as to turn an accommodation crossing into a public level crossing, with all its statutory requirements, but they must do everything that was reasonable in the way of warning people using the crossing so as to reduce danger. In the present case the defendants had not used reasonable care.

ROMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *B. J. M. MacKenna*, Q.C., and *F. Denny* (*M. H. B. Gilmour*); *Gerald Gardiner*, Q.C., *Rodger Winn* and *A. C. Warshaw* (*Langton & Passmore*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PAYMENT INTO COURT FOR BENEFIT OF WIDOW: NO PAYMENT OUT ON REMARRIAGE

Taylor (formerly Ryan) *v.* Cheltenham and Hereford Breweries, Ltd.

Somervell, Denning and Romer, L.JJ. 8th April, 1952

Appeal from Donovan, J., in chambers.

In settlement of an action under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1934, arising out of the death of the applicant's first husband, his employers paid £2,000 into court. The applicant, having remarried, applied for the payment out of the fund on the ground of her remarriage. The master and the judge in chambers refused the application. The applicant appealed. Order 22, r. 14, which deals with payment into court, provides by sub-r. (9) that the provisions of the rule shall apply to "all actions in which damages are claimed or recovered by . . . an infant or person of unsound mind under the Fatal Accidents Acts . . . and also to money which under those Acts is recovered by . . . the widow of the person killed as they apply to money recovered by . . . an infant . . ."

SOMERVELL, L.J., said that it had been held in *Johnston* v. *Henry Liston & Co.* [1920] 1 K.B. 99 and *In re Embleton* [1947] 1 K.B. 142 that the control of the court over moneys paid in for the benefit of an infant terminated at his majority; in the latter case Morton, L.J., had said *obiter* that a "widow of the person killed" would, on remarriage, be similarly entitled to payment out, and that *dictum* had been applied in *Hamer* v. *Cunard White Star, Ltd.* [1952] W.N. 178. Where the basis of control was legal disability, it might properly cease, in the absence of directions to the contrary, when disability ceased. But a widow was not under legal disability, and the references to her must be construed in their own context; they were words of identification without any reference to legal disability. The applicant after remarriage remained the person identified by the rule, and the control of the court continued.

DENNING, L.J., said that the words "during widowhood" ought not to be written into the rule. A widow needed as much protection after remarriage as before; the master would always make a reasonable payment out for a proper purpose.

ROMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *R. Castle-Miller* (*Darracotts*); *J. P. Ashworth* (as *amicus curiæ*) (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHANCERY DIVISION

INCOME TAX: TRAVELLING EXPENSES: BARRISTER

Newsom *v.* Robertson

Danckwerts, J. 30th April, 1952

Case stated by the Special Commissioners.

The taxpayer, a practising member of the Chancery Bar, was in the habit in term time of taking work to his home in Whipsnade, where he had a set of law reports and other textbooks, and of continuing to work at home after dinner for several hours. During the vacation, papers were sent to his home from chambers, and he went to chambers only for conferences. He claimed to be entitled to deduct £137 a year as travelling expenses to and from his home and his chambers.

DANCKWERTS, J., said that the Special Commissioners had reached two conclusions. They had found that the expenses of travelling between Whipsnade and London during term were not expenses "wholly and exclusively laid out or expended for the purposes" of the taxpayer's profession and had, therefore, disallowed that part of his claim, but, on the other hand, they thought that during vacation the base of his operations was changed to Whipsnade and they allowed him the expenses during that period. He (the learned judge) thought that the Special Commissioners had either misdirected themselves or had reached a conclusion unsupported by evidence. It was necessary to take the position throughout the period of assessment as a whole, and it was not right to split the taxpayer's activities in that way. The right way was to look at the expenses and consider what were the purposes of the journeys in respect of which they were incurred. The case was one in which the taxpayer's motives, objects and purpose were mixed. He had chosen to live in Whipsnade because he liked living in the country and wished to enjoy its amenities. Therefore, travelling between Whipsnade and Lincoln's Inn was due partly to the calls of his profession and partly to the

requirements of his existence as a person with a wife and family and a home. It followed that, both with respect to term time and vacation, the travelling expenses were not expenses "wholly and exclusively" laid out for the purposes of his profession and could not be deducted.

APPEARANCES: *J. Millard Tucker*, Q.C., *J. W. P. Clements* and *L. Abel-Smith* (*Durley, Cumberland & Co.*); *F. Heyworth Talbot*, Q.C., and *Sir Reginald P. Hills* (*Solicitor, Inland Revenue*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

FACTORY: CIRCULAR SAW: WOODWORKING MACHINERY REGULATIONS, 1922

Watson *v.* British Thomson-Houston Co., Ltd.

Parker, J. 3rd April, 1952

Action.

The plaintiff was in charge of the operation and adjustment of a circular saw in the defendants' works. At the back of the saw was a curved riving knife, which was adjustable, and which kept the cut portions of the wood apart and acted as a fence for the operator. For safety it was necessary that the curve of the knife should be adjusted as closely as possible to that of the saw. The machine was capable of taking saws up to 24-inch diameter, and such saws were always purchased, but would wear down in time until they were replaced by a new saw. In March, 1950, while the plaintiff was endeavouring to clear a jam, two of his fingers were caught in the saw and severed. As a result of wear, the diameter of the saw was 19½ inches, a replacement having been much delayed in delivery, while the radius of curvature of the knife was 12 inches, as applicable to a new 24-inch saw. While the gap between knife and saw at bench level was under ½ inch, a few inches higher it was about 1¼ inches, as the result of the difference of curvatures. The plaintiff brought an action alleging negligence in that the system of working was unsafe owing to the differing radii, and also alleging a breach of the Woodworking Machinery Regulations, 1922, which provide by reg. 10: "Every circular saw shall be fenced as follows:— . . . (*b*) Behind and in a direct line with the saw there shall be a riving knife, which shall . . . conform to the following conditions:—(i) The edge of the knife nearer the saw shall form an arc of a circle having a radius not exceeding the radius of the largest saw used on the bench. (ii) The knife shall be maintained as close as practicable to the saw, having regard to the nature of the work being done at the time, and at the level of the bench table the distance between the front edge of the knife and teeth of the saw shall not exceed half an inch."

PARKER, J., said that in reg. 10 (*b*) (i), "used" did not mean "capable of being used"; if that were so, the owner might order 18-inch blades for a 24-inch sawbench, leaving a large gap between the teeth and the riving knife. Again, "used" did not mean "which has at some time been used," nor "constantly used." The wording of the regulation did not say any of those things. The question was whether a 24-inch saw was, in general, used. The replacements were always of that diameter, and in the intervals between replacements the saws would be of less diameter, but it could not be said that 24-inch saws were not used within the meaning of the regulation because they wore down and could not be replaced for a period of time owing to market conditions. Further, the plaintiff could not succeed at common law when the defendants were not in breach of the regulations; there was no evidence that it was reasonable and prudent for the employers to do more in the way of fencing than the regulations required. Judgment for the defendants.

APPEARANCES: *F. Denny* (*Rowley Ashworth & Co.*); *M. Berryman*, Q.C., *J. Bassett*, Q.C., and *M. J. Anwyl-Davies* (*Stuart H. Lewis*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CONTRACT: DEFECTIVE WORK BY SUB-CONTRACTOR: RESPONSIBILITY OF CONTRACTOR

Stewart *v.* Reavell's Garage

Sellers, J. 7th April, 1952

Action.

The plaintiff, who owned a 1929 Bentley car, delivered it to the defendants for a complete overhaul of the brakes. This involved relining the brake drums, work which the defendants did not do. The plaintiff, in consultation with the defendants, rejected a quotation from one firm, originally suggested by him, for relining the drums with cast iron liners, and agreed to the acceptance of a cheaper estimate from another firm, suggested by the defendants. The plaintiff did not know that the liners to be supplied under the second estimate were of welded strip metal. Owing to the unusual design of the drums of the car, this form of liner was unsatisfactory and unsafe. The second firm fitted the liners to the drums as sub-contractors to the defendants, and in doing so failed to fit a liner properly to one of the drums. The defendants re-assembled the brakes and tested the car; unknown to them, a part of the ill-fitted liner became detached, with the result that soon after re-delivery to the plaintiff a gentle application of the brakes caused the car to swerve off the road and overturn. The plaintiff brought an action alleging negligence and breach of contract.

SELLERS, J., said that the contract was one for work done and materials supplied. Into such a contract, if the customer proved that the contractors knew that he was relying on their skill and knowledge, there could be implied an absolute warranty of fitness for the intended purposes, if the work was such as the contractors professed to do by themselves or by sub-contractors (for a similar case where a sale of goods was concerned, see *Cammell Laird & Co., Ltd.* v. *Manganese Bronze & Brass Co., Ltd.* [1934] A.C. 402). If the first firm suggested by the plaintiff had carried out the work, that would have negatived reliance by him on the defendants so far as the liners were concerned. But in the events which happened the plaintiff had relied on the defendants to carry out proper and efficient repairs by themselves or by sub-contractors selected by them; this the defendants had failed to do. It was not a case in which the defendants' only duty as regards work sub-contracted was to select suitable sub-contractors, for whose default they would not be liable (see *Edwards* v. *Newland & Co.* [1950] 2 K.B. 534). The facts in the present case were dissimilar. Judgment for the plaintiff.

APPEARANCES: *R. T. Monier-Williams* (*W. A. Sando, Parrott and Co.*); *P. M. O'Connor* (*Joynson-Hicks & Co.*, for *W. Davies and Son*, Woking).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

AMERICAN JUDGMENT IN DOLLARS: EFFECT OF DEVALUATION

East India Trading Co., Inc. *v.* Carmel Exporters & Importers, Ltd.

Sellers, J. 8th April, 1952

Action.

On 2nd August, 1949, an arbitration award was made in America in favour of the plaintiffs, quantifying damages in respect of a breach of contract by the defendants on 13th June, 1949. On 11th May, 1950, the Supreme Court of New York gave judgment on the award for $32,768 in favour of the plaintiffs, who brought an action in the King's Bench Division to enforce that judgment. On 18th September, 1949, the pound was devalued from $4.03 to $2.80. Judgment was given by the master in favour of the plaintiffs for £8,131, the equivalent of the award at the old rate in force at the date of the breach. They claimed a further £3,571, contending that the applicable date for conversion was that of the judgment sued on.

SELLERS, J., said that the defendants had contended that the plaintiffs could have sued in England for breach of contract, in which case damages would have been assessed as at the date of the breach, and that that date should be regarded as the applicable date for conversion; otherwise the rate of exchange would vary according to what course the plaintiffs took. But it was less objectionable that a plaintiff who had obtained judgment should choose the most advantageous course, than that a defendant in default should do so. There was not, however, any question of applying some sort of equitable rule. The correct date on which to convert a foreign debt sued for here was the date on which it became due (see *Madeleine Vionnet et Cie* v. *Wills* [1940] 1 K.B. 72; 56 T.L.R. 15, a decision which was in accordance with *Scott* v. *Bevan* (1831), 2 B. & Ad. 78). Authority and good sense were against the defendants' contention, and there would be uniformity as between foreign judgments which could be registered and those which must be sued on. Judgment for the plaintiffs.

APPEARANCES: *A. A. Mocatta*, Q.C., and *P. Bristow* (*Richards, Butler & Co.*); *Pascoe Hayward*, Q.C., and *I. H. Jacob* (*Fink, Proudfoot & Waters*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Empire Settlement Bill [H.C.] [8th May.
New Towns Bill [H.C.] [8th May.
Pier and Harbour Provisional Order (Falmouth) Bill [H.C.] [8th May.

Read Second Time :—

Edinburgh Merchant Company Endowments (Amendment) Order Confirmation Bill [H.C.] [6th May.
London County Council (General Powers) Bill [H.C.] [7th May.
Motherwell and Wishaw Burgh Order Confirmation Bill [H.C.] [6th May.
National Health Service Bill [H.C.] [6th May.

Read Third Time :—

Winchester Corporation Bill [H.L.] [6th May.

B. Debates

Lord Goddard rose to call attention to the recent case of *R.* v. *Devlin and Burns* for murder and to consider how far the necessity for extra-judicial inquiries after conviction and dismissal of an appeal would be obviated if the Court of Criminal Appeal had power to order a new trial. Lord Goddard said that ever since 1909, the first year of the operation of the Court of Criminal Appeal Act, when the then Chief Justice, Lord Alverstone, had expressed the view that the court ought to be given power to order a new trial, he believed it had been the expressed view of every Chief Justice and also of many judges of great experience in these matters, such as Mr. Justice Avory and Sir Travers Humphreys. In no circumstances would the court be able to order a re-trial of a man who had been acquitted at first instance. At present it could only quash the conviction or dismiss the appeal.

The Home Secretary could not be criticised for the course which he took in the case of Devlin and Burns, because no other course was available to him as the law stood at present, but he thought the procedure was an unfortunate one. Lord Goddard recited the facts of this case and said that the Court of Criminal Appeal had refused to hear fresh evidence which was offered to it for the very good reason that it had no power to order a new trial. It was true that under the Act the court had power to admit fresh evidence and had done so, for example, where the defence had been an alibi and evidence to support that alibi subsequently became available. Devlin and Burns had set up an alibi at the trial but the fresh evidence did not seek to support their alibi but tended to show that June Bury, a witness for the prosecution, had committed perjury. To admit this would be to usurp the function of the jury—which the Court of Criminal Appeal had always refused to do. Only a jury could decide whether her evidence were untrue. If the Appeal Court had said her evidence was perjured how could she then have been tried for that offence ? The prejudice against her would be so great as to exclude the possibility of her getting a fair trial.

If the Appeal Court had power to order a new trial, it would be for a fresh jury to pronounce on whether witnesses were committing perjury or not. The Court of Criminal Appeal would only be concerned to see whether there was *prima facie* evidence of the need for a fresh trial. The accused would be able to put to the witnesses suggestions tending to show their perjury on the earlier trial. What happened in fact in the case under discussion was that the Home Secretary appointed a well-known Queen's Counsel who, in effect, himself re-tried the case. He heard all, or nearly all, the witnesses at the trial. If he had found the witnesses had told lies the Home Secretary would, no doubt, have felt obliged to issue a free pardon. This inquiry was not held under the sanctity of an oath—the Commissioner had no power to administer an oath. It was held in private. The prisoners' counsel were allowed to be present and suggest questions that should be asked and matters that should be gone into, but the Commissioner had rightly refused to allow cross-examination. Police officers were present, but there was no one representing the prosecution. He considered that this was a very unsatisfactory state of affairs.

Lord Goddard said he had been surprised to see in the White Paper a letter from the Director of Public Prosecutions to the Home Secretary stating that he, the Director, would not institute proceedings in respect of any evidence given on matters relevant to the tribunal's terms of reference and would ensure that no use was made in any criminal proceedings of any relevant information given to the tribunal. Suppose June Bury had been found by the Commissioner to have given perjured evidence at the first trial—could she not then have been prosecuted for swearing away a man's life ? If another man had committed the murder, was it right that he should go scot-free ? And, if the letter did not mean these things, then it was merely a trap. Again, what was to prevent a witness going before the Commissioner and deliberately lying to try to save someone dear to him ? The matter was one of very great, almost of constitutional, importance.

Viscount Simon said the Court of Criminal Appeal Act had deliberately refrained from granting to the court power to order a new trial because it was felt that, once a man had been tried by a competent court and the issue had been pronounced upon by a jury, the safest rule to follow was that he should not be exposed to the same peril a second time. The House of Lords had inserted the power, but such powerful attacks had been made on it in the House of Commons on the lines indicated that the proposal had been abandoned. Again, in 1948, the proposal had been discussed in the House of Lords, but had been powerfully attacked by the late Lord du Parcq, and had been abandoned. The two main reasons were, first, that a man should not be put on trial twice for the same offence. If a convicted man was allowed a second trial, could one be reasonably certain that the second trial would be fair to the accused ? On the second trial the public, and therefore the jury, would know all about his past life and previous convictions. The alternative course, which was at present followed, was simply to quash the conviction if some irregularity was shown in the trial. No doubt this did mean that some guilty persons escaped, but it avoided the risk of innocent persons being convicted at a second trial because their earlier crimes were known to the jury. That was the second reason—no one should be convicted in circumstances which prejudiced a fair trial.

Lord Oaksey and Lord Schuster supported Lord Goddard's motion. Lord Wright also gave his support, whilst Viscount Hailsham said he thought that the reform, if made, would on the whole benefit the accused. As a member of the Junior Bar his experience was that the Court of Criminal Appeal was often placed in an impossible position. Either it had to acquit an obviously guilty man or it had to invoke the provision enabling it to override a mistake in procedure where it was obvious that no miscarriage of justice would occur by so doing. If there were a new trial, he thought a jury would not be unduly prejudiced by knowing of the earlier trial and of previous convictions, because it would also have in mind that the Court of Criminal Appeal had pronounced the first trial to be unsatisfactory.

Lord Ogmore said he agreed with Lord Goddard's proposals, and that he had been asked by Viscount Jowitt, who had had to leave the Chamber, to say that he, too, supported the proposals.

The Lord Chancellor, in expressing his personal view and not that necessarily of the Government, said he was most emphatically in favour of Lord Goddard's proposals and had been for many years. He hoped Lord Goddard would continue his campaign and that in time the Court of Criminal Appeal would have the power he desired for it. The Commonwealth countries had not found that the possession of this power by their equivalent courts had in the least militated against the due administration of justice. It was no breach of the principle that a man should not be put in peril twice for the same offence, if he had first been convicted and then, at his own request and for sufficient reason, he was given the chance of acquittal by a second trial. Dealing with the question of the letter sent by the Director of Public Prosecutions, Lord Simonds said in these matters the Director acted under the supervision of the Attorney-General. It would be a grave mistake to think that in this matter he had acted with any impropriety. It was a commonplace that on numerous occasions in our system immunity had to be given in order to secure that justice was done. He could not speak as to the Government's view on this matter, and even if they were convinced of the need for the change, he did not think the present legislative programme would permit of the introduction of the necessary measure at present. [8th May.

C. Questions

Part-time Justices Clerks

In reply to Lord Merthyr, who asked whether a decision had yet been reached as to the payment of compensation to part-time justices' clerks who might lose their employment in consequence of the passing of the Justices of the Peace Act, 1949, the Lord Chancellor said that this difficult question was at present under close consideration by Her Majesty's Government and he hoped that a decision would soon be reached. [7th May.

Local Government Reform

Lord Lloyd said that the Government would give attention to the questions of reform of the functions of local authorities and of the machinery for altering the boundaries of local government areas. They saw no immediate prospect of announcing proposals or of introducing legislation, but hoped, without definitely committing themselves to such a course, that it might be possible to do so before the end of the present Parliament. [7th May.

Married Women and Public Assistance

The Earl of Selkirk said it was estimated that there were about 70,000 women receiving national assistance who were married but living apart from their husbands. About 20,000 of these women were old age or retirement pensioners, and it would appear that in a considerable proportion of cases the separation was of long standing, but it was not known how many of the women had been "deserted." [7th May.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [7th May.

To make it an offence to carry out any development consisting of the removal of surface soil from land used for the purposes of agriculture without the grant of planning permission required in that behalf under the Town and Country Planning Act, 1947.

Read Second Time:—

Agriculture (Ploughing Grants) Bill [H.C.] [7th May.
Family Allowances and National Insurance Bill [H.C.] [5th May.

In Committee:—

Finance Bill [H.C.] [8th May.

B. Questions

Offences Against the Person Act (Children)

Sir David Maxwell Fyfe stated that, so far as he had been able to ascertain, proceedings had been taken under the Offences Against the Person Act, 1861, for ill-treatment or injury of a child by the person or persons responsible for the care of the child at the time, in seven cases in the period from 1st January to 23rd April of this year. One case had not yet been disposed of and in another case the person charged was found insane on arraignment and ordered to be detained during Her Majesty's pleasure. In three cases terms of imprisonment had been imposed (of seven years, four years and four months respectively). In one case the person convicted was placed on probation for two years, and in another the person convicted was bound over in her own recognisances for two years. [5th May.

Road Accidents (Police Statements)

Mr. J. T. Price asked the Home Secretary what were the regulations in force governing the production of statements made to police officers by witnesses of road accidents when such statements might be required by injured persons or their legal representatives. Sir David Maxwell Fyfe said that the practice of chief officers of police in these cases was not governed by regulations. The general question of making statements available to civil litigants had, however, been considered by the Supreme Court Committee on Practice and Procedure and, as a result, a common procedure had been recommended to chief officers of police. [8th May.

STATUTORY INSTRUMENTS

Act of Sederunt (Alteration of Court of Session Fees), 1952. (S.I. 1952 No. 890 (S. 35).)

Act of Sederunt (Alteration of Sheriff Court Fees), 1952. (S.I. 1952 No. 891 (S. 36).)

Act of Sederunt (Increase of Fees of Shorthand Writers), 1952. (S.I. 1952 No. 892 (S. 37).)

Act of Sederunt (Rules of Court Amendment), 1952. (S.I. 1952 No. 893 (S. 38).)

Coffee (Amendment) Order, 1952. (S.I. 1952 No. 860.) 5d.

Colonial Air Navigation (Amendment) Order, 1952. (S.I. 1952 No. 869.) 5d.

Colonial Civil Aviation (Application of Act) Order, 1952. (S.I. 1952 No. 868.) 8d.

Corset Wages Council Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 883.) 8d.

Cutlery Wages Council (Great Britain) Wages Regulation Order, 1952. (S.I. 1952 No. 849.) 8d.

Dressmaking and Women's Light Clothing Wages Council (England and Wales) Wages Regulation Order, 1952. (S.I. 1952 No. 882.) 8d.

Eggs (Great Britain and Northern Ireland) (Amendment No. 3) Order, 1952. (S.I. 1952 No. 914.)

Essex River Board Constitution Order, 1952. (S.I. 1952 No. 879.) 5d.

Floor Coverings (Control of Manufacture and Supply) (Revocation) Order, 1952. (S.I. 1952 No. 846.)

Foreign Compensation (Czechoslovakia) (Amendment) (No. 2) Order, 1952. (S.I. 1952 No. 864.)

Importation of Raw Cherries Order of 1952. (S.I. 1952 No. 884.) 6d.

Indian Civil Service Family Pension Fund (Amendment) Rules, 1952. (S.I. 1952 No. 889.) 5d.

Japanese Treaty of Peace Order, 1952. (S.I. 1952 No. 862.) 8d.

Justices' Clerks (Part Time) Superannuation Order, 1952. (S.I. 1952 No. 910.)
As to this Order, see p. 302, *ante*.

Juvenile Courts (London) Order, 1952. (S.I. 1952 No. 863 (L. 5).)
This Order alters from Tuesday to Thursday at 10 a.m. the day for the holding of a juvenile court at the Tower Bridge Police Court.

London Traffic (Prescribed Routes) (No. 8) Regulations, 1952. (S.I. 1952 No. 871.)

London Traffic (Restriction of Waiting) (Walton and Weybridge) Regulations, 1952. (S.I. 1952 No. 870.)

Malayan Royal Naval Volunteer Reserve (Federation Division) Order, 1952. (S.I. 1952 No. 866.)

Malayan Royal Naval Volunteer Reserve (Singapore Division) Order, 1952. (S.I. 1952 No. 867.)

National Assistance (Determination of Need) Amendment Regulations, 1952. (S.I. 1952 No. 873.)

Personal Injuries (Civilians) (Amendment) Scheme, 1952. (S.I. 1952 No. 874.)
This Order increases the amounts of pensions payable under the Scheme.

Prohibition of Landing of Animals and Hay and Straw from the Channel Islands Order, 1952. (S.I. 1952 No. 902.)

Ready-made and Wholesale Bespoke Tailoring Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 897.) 8d.

Shirtmaking Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 878.) 8d.

Toy Manufacturing Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 877.) 6d.

Trading with the Enemy (Enemy Territory Cessation) (Belgium) Order, 1952. (S.I. 1952 No. 880.)

Wages Regulation (Unlicensed Place of Refreshment) (Amendment) Order, 1952. (S.I. 1952 No. 861.) 8d.

Wholesale Mantle and Costume Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 896.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

Mr. J. B. Harwood, Clerk to Otley Urban Council, has been appointed Clerk to Wolverton (Buckinghamshire) Urban Council.

Mr. J. R. Haslegrave, assistant Town Clerk of Birmingham, has been appointed deputy Town Clerk of Leeds.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Rent Restriction—LETTING BY CO-OWNERS TO ONE OF THEM —RENT PAYABLE TO THE OTHER—WHETHER PROTECTED TENANCY

Q. A testator died in 1928, appointing X and Y as his executors and devising to them a dwelling-house upon trust to sell the same and hold the net proceeds thereof in trust for themselves in equal shares beneficially. The testator was living in the dwelling-house at the time of his death, and the beneficiary X agreed to Y becoming a tenant in the dwelling-house at a nominal rent of £3 per month, which sum was paid to X as his half-share in the income of the proceeds of sale of the said house. X now wishes to have the estate finally wound up by the sale of the property. Y refuses to give up his tenancy, claiming that he is a protected tenant. Is X entitled to insist on Y giving up possession of the house in order to permit a sale with vacant possession ?

A. If the original intention was to create a tenancy in favour of Y it would appear that he is entitled to claim the protection of the Rent Restrictions Acts provided the rent is at least two-thirds of the rateable value. Whether there is a tenancy must obviously be a question of fact, but the payment of " rent " in return for exclusive occupation is some indication of a tenancy. We consider, however, that it would be open to X to contend that Y, by claiming the protection of the Rent Acts, is taking a personal advantage from his position as trustee for himself and X. Against this, Y would no doubt say that the advantage was originally gained with the consent of X, who is not now therefore in a position to complain. Although the matter is one of some doubt, and does not appear to be touched by authority, it is possible that in administration proceedings the court might order Y to give up possession or otherwise to compensate X.

Builder's Claim for Amount Exceeding Licensed Price—WRIT—CONTEMPT

Q. We act for a client who has had a house built recently. He has paid the builder the licensed price and has now received a demand for an amount in excess of this. He has been threatened with the issue of a writ and, while we have advised that he has a defence to such an action (*Bostel Brothers, Ltd.* v. *Hurlock* [1949] K.B. 74), we feel that the other side may be under some difficulty in drafting the statement of claim in view of *R.* v. *Weisz and Another; ex parte Hector MacDonald, Ltd.* [1951] 2 K.B. 611. While this case was based on s. 18 of the Gaming Act, 1845, which prohibits actions to recover such particular sums of money, we think that the *dictum* of Lord Goddard, C.J., could mean that in the present case the plaintiff should reveal in his endorsement that this was a claim for a payment for work in excess of the licence figure. We feel that an endorsement saying the claim was for (say) " work and materials " would be feigning the issue, unless mention was made that such work was under licence. If this view is correct, of course, the plaintiff is in danger of being in contempt of court unless he reveals the true nature of his action. If he were to reveal that he was suing for money in excess of the licence figure he might, of course, find that the Registry would refuse his writ.

A. We consider that in view of *R.* v. *Weisz, supra*, it would constitute a contempt of court for a solicitor to issue a writ seeking to recover money which he knew was irrecoverable on the ground of illegality. His purpose could only be to abuse the process of the court by the threat of publicity. The principle, we think, extends to all writs issued in circumstances where the sum claimed is clearly irrecoverable on ground of illegality. An endorsement as for " work done and materials supplied " would clearly deceive the court as to the illegality of the claim if no mention were made of the fact that it was in excess of licence.

Title—EXECUTOR BENEFICIARY—IMPLIED ASSENT—POSSESSORY TITLE

Q. We are acting for both vendor and purchaser on the sale of part of lands purchased in 1948. On that occasion the vendor was advised to accept a possessory title supported by a statutory declaration. In this the declarant stated that he had read two admissions dated 1910 of A (the land being then copyhold) and the probate of the will of A dated 1937 whereby she gave everything of which she died possessed to B and appointed B executrix, and that the lands then contracted to be sold by B were the same as those described in the admissions; also that during her lifetime A, and, from her decease, B had been in receipt of the rents and profits and that the declarant had never heard of any adverse claim. In 1948 B conveyed to the vendor as beneficial owner without having previously assented, and died testate in 1949. Is it necessary to rectify the title by calling for a grant *de bonis non* to A's estate and thereafter a confirmatory conveyance ? Or will a confirmatory conveyance by B's executors suffice ? Or can the present purchaser be made to accept a title rooted either in A's probate or the conveyance to the vendor ?

A. As it appears that B was beneficially entitled to the legal estate vested in her as executrix of A, a written assent in her own favour was probably unnecessary (*Re Hodge* [1940] Ch. 260), and accordingly the conveyance of 1948 by her as beneficial owner would seem to be sufficient evidence of an implied assent provided there is no recital in that conveyance which would negative such implication. For this reason we do not consider that a confirmatory conveyance is required, but, if such is desired, it would be by B's executors, the chain of executorship not having been broken. We suggest that the title should be made to commence with the conveyance of 1948, with a proviso that the purchaser shall be entitled to evidence in the form of the statutory declaration referred to of the seisin without adverse claim of B and her predecessor in title for upwards of thirty years prior to 1948.

Landlord and Tenant—CONDITION AS TO ERECTION OF WIRELESS AERIAL—TELEVISION AERIAL

Q. A is the owner of a dwelling-house of which B, for whom we act, is the contractual tenant and of which he has been in occupation for a number of years. The tenancy is weekly and there is no written agreement in force. B has purchased a television set and has had the usual aerial erected on the chimney stack. A has written to B ordering him to take it down and has also written to the radio dealers who have supplied B with the set and the aerial and has ordered them to remove it. He is being very objectionable. B has written to A informing him that he is prepared to insure against damage to the chimney and the property in respect of the erection of the aerial and A still objects. On the back of B's rentbook there is a condition that no wireless aerial will be erected without the permission of the landlord. A wireless aerial has been erected for many years and there has been no objection. Assuming that B takes no further action in the matter and leaves his television aerial up has A any right of action against B other than an action for damages, and if so would the damages be assessed on what the landlord has suffered, which is in fact nothing, and be nominal only ? Assuming that A could substantiate that B's action is a breach of the tenancy agreement (which is doubtful), could A take action for possession, and if so do you consider that the court would consider an order for possession to be reasonable ?

A. (1) Whether B was bound by the condition would depend on whether the facts could be distinguished from those of *Maley* v. *Fearn* (1947), 91 SOL. J. 67 (C.A.), in which acceptance without objection was held to give contractual force to a " condition " printed on the cover of a rentbook. In that case the terms were " put very prominently opposite the page on which the rent was entered," which invites distinction.

(2) If the condition did bind B it would be possible to argue that it has ceased to do so by reason of A's acquiescence, on the lines of *Bray* v. *Fogarty* (1870), 18 W.R. 1151, and *Gibbon* v. *Payne* (1907), 23 T.L.R. 250 (C.A.).

(3) We agree that even if those points were decided against B it is unlikely that A would succeed in an action for possession based on breach of a term of the tenancy; but the action might be adjourned generally, with liberty to apply, to enable B to remove the aerial, and he might have to pay A's costs. Apart from this, while we agree that damages might be nominal in an action for breach of covenant, the possibility of a claim for an injunction should not be overlooked; if, however, the presence of the aerial does not depreciate the property, we consider that though the covenant is a negative one the court should refuse an injunction for reasons indicated in A. L. Smith, L.J.'s judgment in *Shelfer* v. *City of London Electric Lighting Co., Ltd.* [1895] 1 Ch. 287 (C.A.).

NOTES AND NEWS

Honours and Appointments

Mr. FRANK MILTON has been appointed a Metropolitan Magistrate.

Personal Notes

Mr. Charles Milner is to retire after fourteen years as Chief Clerk to Sheffield County Court and over forty-nine years' service with county courts. He will be succeeded by Mr. Cyril Cunningham.

Miscellaneous

GENERAL COUNCIL OF THE BAR

The following candidates have been duly proposed to fill the twenty-four vacancies upon the Council :—

Queen's Counsel : Messrs. John Maude, Montague Berryman, Constantine Gallop, G. R. Hinchcliffe, J. Pennycuick, E. Milner Holland, W. K. Carter, Ifor Lloyd, J. R. D. Crichton.

Outer Bar : Messrs. George Maddocks, T. K. Wigan, P. J. Sykes, L. Herrick Collins, R. G. Micklethwait, Hector Hillaby, D. G. A. Lowe, Norman Richards, G. N. Black, Alexander Karmel, E. Martin Jukes, H. F. Newman, G. H. Newsom, Norman Brodrick, V. M. C. Pennington, John B. Latey, M.B.E., The Hon. J. R. Cumming-Bruce.

Under ten years' standing at the Bar : Messrs. O. R. W. W. Lodge, C. Trevor Reeve, G. Ellenbogen, G. V. Owen, W. H. Hughes.

SOUTHPORT DEVELOPMENT PLAN

The above development plan was on 29th April, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Southport and comprises land within the said county borough. A certified copy of the plan as submitted for approval may be inspected at the Town Hall, Southport (Corporation Street entrance), from 9 a.m. to 5.15 p.m. (Saturdays 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 21st June, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Southport County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

SOCIETIES

The annual provincial meeting of the LOCAL GOVERNMENT LEGAL SOCIETY took place at the Civic Hall, Leeds, on Saturday, 26th April, when Mr. Bernard Kenyon, the Clerk of the West Riding County Council, gave an interesting address entitled "Present and Future Relations between County Councils and County Boroughs." Mr. S. Holmes (Vice-Chairman of the Society) presided in the absence through illness of the Chairman, Mr. F. Scott-Miller. Afterwards the Right Worshipful The Lord Mayor of Leeds entertained some sixty members of the Society and their official guests to luncheon. Among the guests were Mr. Ralph Cleworth, Q.C. (Stipendiary Magistrate of Leeds), Mr. Donald Wade, M.P. (President of the Leeds Incorporated Law Society), Mr. Kenyon, Mr. O. A. Radley, C.B.E., M.C. (Town Clerk of Leeds), Alderman J. Croysdale, Alderman D. Beevers and Mr. E. C. Tunnicliffe (Governor of H.M. Prison, Leeds).

The Hon. Mr. Justice Vaisey will take the chair at the annual general meeting of the BARRISTERS' BENEVOLENT ASSOCIATION in the Old Hall, Lincoln's Inn, on Tuesday, 20th May, at 4.30 p.m.

At the inaugural meeting of the Plymouth branch of the SOLICITORS' MANAGING CLERKS' ASSOCIATION on 2nd May, Mr. Ernest Vosper, Vice-President of Plymouth Law Society, presided. Mr. A. Bird, the Association's national President, spoke, and Mr. E. B. Haseldine, Vice-President, and Mr. E. C. Coles, Honorary Secretary, were also present. An interim committee was elected.

The SOLICITORS' ARTICLED CLERKS' SOCIETY will hold a general meeting, with refreshments, at 6 p.m. on Wednesday, 21st May, at The Law Society's Hall, to discuss plans for summer activities.

At a meeting of the LAW STUDENTS' DEBATING SOCIETY on 29th April the motion "That the British Colonial Empire should now be wound up" (affirmative : Mr. D. N. Pritt, Q.C. ; negative : Lord Milverton, G.C.M.G.) was defeated by 17 votes to 15.

CASES REPORTED IN VOL. 96

22nd March to 17th May, 1952.

For list of cases reported up to and including 15th March, see *ante*, p. 170.

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